

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

PATRICK JAMES WERNER,

Case No. 15-cv-1375-pp

Petitioner,

v.

JUDY SMITH,

Respondent.

**ORDER GRANTING MOTION TO USE RELEASE ACCOUNT TO COVER THE
REMAINING BALANCE OF THIS ACTION (DKT. NO. 16)**

On November 17, 2015, petition Patrick James Werner, incarcerated at Oshkosh Correctional Institution, filed a petition for *habeas corpus* relief under 28 U.S.C. §2254. Dkt. No. 8. With his petition, he filed a motion for leave to proceed *in forma pauperis*, Dkt. No. 4, and his prisoner trust fund account statement, Dkt. No. 5. On December 2, 2015, the court denied the motion for leave to proceed *in forma pauperis*, and ordered the petitioner to pay the filing fee in two parts: \$2.50 by January 15, 2016 and \$2.50 by March 1, 2016. Dkt. No. 9.

On December 29, 2015, the petitioner filed a motion for an extension of time to pay the first part of the filing fee. Dkt. No. 11. On January 4, 2016, the court granted that motion. Dkt. No. 12. The court ordered the petitioner to pay the fee in two parts: \$2.50 by February 4, 2016 and \$2.50 by March 1, 2016. Id. The petitioner now has paid the first half of his filing fee in two installments: \$1.46 on January 4, 2016 and \$1.04 on January 28, 2016. He must still pay \$2.50 by March 1, 2016.

On February 9, 2016, the petitioner filed a motion asking the court to allow him to use his release account to cover the remaining balance of the filing fee. Dkt. No. 13. On February 16, 2016, the court denied the motion. Dkt. No. 14.

On March 11, 2016, the petitioner filed a new motion asking the court to order that he be allowed to use release account funds to pay the remainder of the filing fee. Dkt. No. 16. As of the date of that motion and this order, the petitioner owes \$2.50 towards the *habeas corpus* filing fee, with a deadline for paying of April 8, 2016. With the motion, the petitioner filed his trust account statement. Dkt. No. 16-1. That statement shows that, as of February 29, 2016, he has \$1.04 in his “regular” trust account and \$3.33 in his release account. Id. at 1. He argues that he’s been spending very little on canteen items, and ought to be able to use the release funds to pay the balance of the filing fee. Dkt. No. 16.

The Prison Litigation Reform Act (PLRA) requires the court to collect filing fees from a “prisoner’s account.” 28 U.S.C. §1915(b). The term “prisoner’s account” encompasses both a prisoner’s release account and general account. Spence v. McCaughtry, 46 F. Supp. 2d 861, 862 (E.D. Wis. 1999). However, “given the purpose of the release account to provide funds to the prisoner upon his or her release from incarceration, the Court does not deem it prudent to routinely focus on the release account as the initial source of funds to satisfy the filing fee payment requirements of the PLRA.” Smith v. Huibregtse, 151 F. Supp. 2d 1040, 1042 (E.D. Wis. 2001). Nevertheless, upon request, a court

may allow a plaintiff to pay a filing fee, or a portion thereof, out of his release account. Doty v. Doyle, 182 F. Supp. 2d 750, 752 (E.D. Wis. 2002).

The petitioner's desire to pay his filing fee with funds from his release account is clear, and his release account appears to contain just enough funds to cover the remaining portion of the fee. Accordingly, the court grants the petitioner's motion.

The court **GRANTS** the petitioner's motion to use release account to cover the remaining balance of this action (Dkt. No. 16). The court **ORDERS** the warden at Oshkosh Correctional Institution to withdraw \$2.50 from the petitioner's release account and forward that sum to the Clerk of Court for this district on or before **April 22, 2016**.

Once the court receives the remaining portion of the filing fee, the court will screen his petition under Rule 4 of the Rules Governing §2254 Cases. If, after screening the petition, the court decides that the petition states a claim that is not frivolous, and for which a federal court could grant relief, the court will order the respondent to file an answer to the petition, and will set a schedule for further briefing.

Dated in Milwaukee, Wisconsin this 6th of April, 2016.

BY THE COURT:



HON. PAMELA PEPPER
United States District Judge